Draft FB 2017 Cl 43 Sch 14: VAT zero-rating of adapted motor vehicles

Indirect Tax

01 March 2017

LITRG comments on draft proposals to limit VAT zero-rated purchases of motor vehicles by eligible disabled people, to come into effect from 6 April 2017.

Ten years ago, LITRG published a report entitled 'VAT and disabled people – the case for removing the barriers'.

Since that report was published, little has changed other than LITRG were successful in having HMRC's guidance material improved for potential users of the various provisions in VAT law designed to help minimise the additional costs involved in overcoming disabilities. This is largely because the zero rating provisions are permitted by derogation from the EU Principal VAT Directive, and such derogations might be infringed by any substantive change in the UK VAT legislation, particularly if this were to widen the availability of zero rates.

Now, however, draft Finance Bill 2017 clause 43 and schedule 14 propose restricting the availability of zero-rating for the purchase of an adapted motor vehicle for eligible disabled users to one every three years (subject to a very few exceptions). This measure is designed to counter suspected abuse of the current law.

LITRG's response to the draft legislation pointed out that no clear case has been made for the choice of a three year limit, and highlights that it is disappointing that the change has not been discussed with HMRC's Disabled Customer Consultation Group (on which LITRG is represented) since it was consulted on in 2014. If designed to counter the activities of those purchasing adapted vehicles, removing adaptations and then selling for a profit multiple times in a year – that is, very short term transactions – then a shorter limit of, say, one year would seem sufficient to counter such abuse.

Rather than limit application of the relief for genuine users, LITRG suggested that it should be possible in the digital age for HMRC to: automate collection of data regarding users of the scheme; match that data quickly so as to identify abuse; and take swift compliance action where necessary.

As is stands, the proposals seem very much like a blunt instrument to prevent abuse, but regretfully may equally prevent genuine users from obtaining relief – either by meaning they do not qualify, or as a result of the complexity of the rules meaning they think they do not qualify (or perhaps even the threat of a penalty for getting it wrong putting them off claiming). The lack of a full equality impact assessment, or even addressing equality impacts in the 'Tax Information and Impact Note' accompanying the draft legislation – such as the added burdens and intrusions into personal privacy noted in LITRG's response – is unacceptable. LITRG recommended that a full assessment should be published.

Furthermore, the proposed legislation imposes a burden of having to satisfy HMRC that a vehicle is no longer suitable for their use because of changes in their condition, if they wish to purchase another vehicle within three years. LITRG listed a number of problems with this: there is no right of appeal; it is not clear how it is to be administered, for instance LITRG queried what expertise HMRC staff have to judge suitability; it relies upon the user potentially having to disclose detail about their condition which seems intrusive; and finally it does not cater for changes in personal circumstances – only changes in the person's condition.

In summary, LITRG recommended:

- Instead of restricting the relief, HMRC instead improve the administration of the existing relief, gathering/matching data and taking compliance action against abuse. This could be largely automated in the modern world, and so not resource intensive. We appreciate penalty provisions might be needed to aid enforcement.
- Failing that, a one year timeframe should be supplanted for the proposed three years.
- Failing that, there should be further exceptions to the single vehicle limit: to allow more than one vehicle to be purchased if the user has a particular need; and to allow replacement of a vehicle within three years if the user's circumstances have changed (not just their condition), rendering the existing vehicle unsuitable.

- A right of appeal is crucial and should be put in place so that HMRC are not the sole judge of whether or not a vehicle is no longer suitable.
- The legislation should be clarified so that the statute shows that the supply does not have to be to the disabled person, but may be to another person provided the disabled person is the key beneficiary. Currently, this is made clear in HMRC guidance only.
- HMRC guidance should be improved urgently, particularly relating to those who due to advances in prostheses no longer need to regularly rely on wheelchairs for mobility. This is essential in view of the proposed penalty for incorrect certificates. Furthermore, HMRC's guidance should be reviewed and amended in the context that it narrows the terms 'domestic or personal use' in the legislation to mean 'domestic or private use', which we do not believe is justified.

Finally, LITRG noted that whatever changes are made in Finance Act 2017, a commitment should be given to review this relief more widely with the intention of reforming it to give relief to all of those who need substantial adaptations, not just wheelchair (or stretcher) users. It is anomalous in today's world to define relief by reference to the type of mobility aid the person uses rather than their actual need. Such changes may be possible in the wake of 'Brexit' where they might not be at present due to relief being allowed by virtue of a derogation from the principal VAT Directive.

LITRG's full response to the draft legislation can be found on the LITRG website.